

STATE OF INDIANA) IN THE MARION CIRCUIT/SUPERIOR COURT
) SS:
COUNTY OF MARION) CAUSE NO. 49C010502 PL0004556

STATE OF INDIANA,)

Plaintiff,)

v.)

MARY DREIBELBIS,)

Defendant.)

FILED

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FEB 7 2005

Doreen Brown Shaller
CLERK OF THE
MARION CIRCUIT COURT

**COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS, AND CIVIL
PENALTIES**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.*, for injunctive relief, consumer restitution, costs, civil penalties, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).
2. At all times relevant to this Complaint, the Defendant, Mary Dreibelbis, was an individual engaged in the sale of items via the Internet, with a principal place of business in Marion County, located at 3526 Robson Street, Indianapolis, Indiana, 46201.

FACTS

3. At least since May 5, 2004, the Defendant has offered items for sale via the Internet.

A. Allegations Related to Consumer Matthew Tremaine's Transaction.

4. On or about May 5, 2004, the Defendant entered into a contract via the Internet with Matthew Tremaine ("Temaine") of Irvine, California, by representing the Defendant would sell an Alienware Area 51 Extreme PC to Tremaine for One Thousand Six Hundred and Ninety-Nine Dollars and Ninety-Nine Cents (\$1,699.99), which Tremaine paid.

5. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale she would deliver the computer to Tremaine within a reasonable period of time.

6. The Defendant has yet to either provide a refund, or to ship the computer to Tremaine.

B. Allegations Related to Consumer Deborah Sue McGee's Transaction.

7. On or about August 4, 2004, the Defendant entered into a contract via the Internet with Deborah Sue McGee ("McGee") of Muscle Shoals, Alabama, by representing the Defendant would sell a Sony laptop to McGee for Nine Hundred and Fifty-Five Dollars (\$955.00), which McGee paid.

8. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendant is presumed to have represented at the time of sale she would deliver the laptop to McGee within a reasonable period of time.

9. The Defendant has yet to either provide a refund, or to ship the laptop to McGee.

COUNT I-VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

10. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 9 above.

11. The transactions referred to in paragraphs 4 and 7 are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(a)(1).

12. The Defendant is a “supplier” as defined by Ind. Code § 24-5-0.5-2(a)(3).

13. The Defendant’s representations to the consumers that the consumers would be able to purchase the items as represented, when the Defendant knew or reasonably should have known the consumers would not receive such a benefit, as referenced in paragraphs 4 and 7 are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

14. The Defendant’s representations to consumers that the Defendant would deliver the items, or otherwise complete the subject matter of the consumer transaction within a reasonable period of time, when the Defendant knew or reasonably should have known she would not, as referenced in paragraphs 5 and 8, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

15. The Defendant’s representations to the consumers that they would be able to purchase the items as advertised by the Defendant, when the Defendant did not intend to sell the items as represented, as referenced in paragraphs 4 and 7, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

COUNT II- KNOWING AND INTENTIONAL VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

16. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 15 above.

17. The misrepresentations and deceptive acts set forth in paragraphs 4, 5, 7, and 8 were committed by the Defendant with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, Mary Dreibelbis, for a permanent injunction pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendant from the following:

- a. representing expressly or by implication the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendant knows or reasonably should know it does not have;
- b. representing expressly or by implication the Defendant is able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the Defendant knows or reasonably should know she can not; and
- c. representing expressly or by implication a consumer will be able to purchase the subject of a consumer transaction as advertised by the Defendant, if the Defendant does not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

- a. cancellation of the Defendant's unlawful contract with consumers, including but not limited to all persons referenced in paragraphs 4 and 7, pursuant to Ind. Code § 24-5-0.5-4(d);
- b. consumer restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers, including but not

limited to all persons referenced in paragraphs 4 and 7, for the purchase of the Defendant's items via the Internet, in an amount to be determined at trial;

c. costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

d. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;

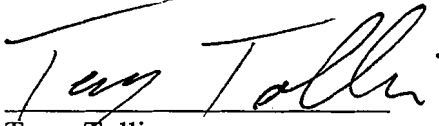
e. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and

f. all other just and proper relief.

Respectfully submitted,

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By:


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